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IN THE

Supreme Court of the United States

October Term, 1966

NO._____

GEORGE H. GREENE, JR., *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

ON APPEAL FROM THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

To: *The Honorable Supreme Court Of The United States Of America:*

JURISDICTIONAL STATEMENT

George H. Greene, Jr., Appellant herein, appeals from the final judgment of the Court of Criminal Appeals of the State of Texas in overruling Appellant's Motion for Rehearing, without written opinion, entered on the 12th day of October, A. D., 1966, wherein said Court affirmed the judg-

ment of the County Criminal Court at Law No. 2 of Harris County, Texas, remanding Appellant to the custody of Herman B. Short, Chief of Police, City of Houston, Texas.

OPINIONS BELOW

The opinions below appear:

Opinion of the Court of Criminal Appeals of the State of Texas, entitled Ex Parte George H. Greene, Jr., reported in 406 S.W.2d 465, and is appended hereto as Appendix "A", page 7.

Judgment of the Court of Criminal Appeals of the State of Texas, rendered and entered on the 12th day of October, A. D., 1966, wherein Appellant's Motion For Rehearing was overruled without written opinion, and is appended hereto as Appendix "B", page 9.

JURISDICTION

Appellant's Motion For Rehearing was overruled on the 12th day of October, A. D., 1966, at which time the judgment of the Court of Criminal Appeals of the State of Texas was entered and became effective, and is appended hereto as Appendix "B", page 9. Notice of Appeal was filed in that Court on the 28th day of December, A. D., 1966. (Record, page 66-67.) The Court of Criminal Appeals of the State of Texas is not an intermediate court. It is the Court of last resort in all matters within its jurisdiction in the State of Texas, its judgments are not reviewed by the Supreme Court of the State of Texas, or by any other Texas Court.

The jurisdiction of this Court is invoked under Title 28, U.S.C.A., Section 1257 (2). *Mishkin v. State of New York,*

86 S.Ct. 958, 383 U.S. 502. Appellant, by Habeas Corpus proceeding, contended that his arrest and subsequent confinement and restraint on a warrant of arrest (Record, page 14), issued on a complaint (Record, page 13), drawn to conform to Article 15.05 V.A.C.C.P., Appendix "C", page 10, based on information and belief of the affiant, with no allegation of personal knowledge or probable cause, was illegal and in violation of and repugnant to the Fourth Amendment and the Fourteenth Amendment to the Constitution of the United States of America.

QUESTION PRESENTED

Whether the Court of Criminal Appeals of the State of Texas erred in failing to hold Article 15.05 (2) V.A.C.C.P., Appendix "C", page 10, repugnant to the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America, or either of them, in that said statute, as a requisite, allows the filing of a complaint, which was the basis for the issuance of the warrant of arrest herein (Record, page 14), based solely on information and belief of the affiant thereto, and without allegations of personal knowledge or probable cause that an offense was committed and if an offense was committed, that it was committed by Appellant?

STATUTES INVOLVED

The pertinent statute, Article 15.05, *Texas Code of Criminal Procedure*, is appended hereto as Appendix "C", page 10.

STATEMENT

On the 1st day of December, A. D., 1965, Appellant was cited for the offense of speeding 45 miles per hour in a

35 mile per hour zone, in the City of Houston, Harris County, Texas. On the 16th day of December, A. D., 1965, a complaint (Record, page 13) was filed in the Corporation Court of the City of Houston, Harris County, Texas, charging Appellant with the offense of speeding as aforesaid, this complaint was the basis for a warrant of arrest (Record, page 14) of Appellant being issued on the 22nd day of March, A. D., 1966. This warrant of arrest was executed on the day of its issuance, by arresting Appellant and placing him in the custody of the Chief of Police of the City of Houston, Harris County, Texas, in the jail of said City. From this restraint and confinement, Appellant made application for a Writ of Habeas Corpus (Record, pages 2, 3 and 4) to the County Criminal Court at Law No. 2 of Harris County, Texas, and as grounds for said Writ alleged the unconstitutionality of the warrant of arrest (Record, page 14) and the complaint (Record, page 13) and that Appellant's rights guaranteed to him by the Fourth and Fourteenth Amendments to the Constitution of the United States of America were violated.

The Writ of Habeas Corpus prayed for by Appellant was granted (Record, page 8) and after hearing, the relief sought by Appellant was denied (Record, page 17), he was ordered remanded to the custody of the said Chief of Police of said City, and no new commitment was ordered issued by the Court, from this judgment Appellant appealed to the Court of Criminal Appeals of the State of Texas.

The Court of Criminal Appeals of the State of Texas affirmed the judgment of the trial Court (Appendix "A", page 7) and subsequently overruled Appellant's Motion For Rehearing without written opinion (Appendix "B").

THE QUESTION IS SUBSTANTIAL

The question raised in this appeal is substantial, the question is of great public interest and applies to every person arrested by virtue of a warrant of arrest, be it for a lowly traffic violation or for the purported commission of an infamous felony. Must a person so arrested be subjected to a search of his person, as is out of common sense always done prior to placing him in confinement in jail, when the fruits of such search would not be admissible, should the fruits be contraband, and the warrant was not based on a complaint that set out probable cause or personal knowledge? *Giordenello v. United States*, 357 U.S. 480, 78 S.Ct. 1245, 2 L.Ed.2d 1503, and *Barnes v. State of Texas*, 380 U.S. 253, 85 S.Ct. 942, 13 L.Ed.2d 818. Should a conscientious, dedicated law enforcement officer be forced to look beyond the process in hand to feel secure in the execution of a warrant of arrest and the search incident to such execution, or should such officer be forced to look further into some obscure magistrate's office, a great distance away, to determine if he is holding a valid warrant of arrest, that has as its basis a complaint with allegations of personal knowledge or probable cause and not information and belief of the affiant, as the statute, Article 15.05 Code of Criminal Procedure, permits?

It is submitted that the decision of the Court of Criminal Appeals of the State of Texas should be reversed and that the warrant of arrest under which Appellant is presently restrained should be declared by this honorable Court to be illegal and void and Appellant granted all the relief he has been heretofore denied. We believe that the question

presented by this appeal is substantial and that it is of great public importance.

Respectfully submitted.

BUCK C. MILLER
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Houston, Texas 77002

Of Counsel:

W. C. WIEBUSCH
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I, Buck C. Miller, attorney for Appellant, hereby certify that on this the 23rd day of March, A. D., 1967, I served a copy of this Jurisdictional Statement on Crawford Martin, Attorney General of the State of Texas, Austin, Texas, by depositing same in the United States Post Office, with first class postage prepaid, addressed to the said Crawford Martin at Box "R", Capitol Station, Austin, Texas 78711.

BUCK C. MILLER
Attorney for Appellant

APPENDIX "A"

Ex Parte No. 39,658

George H. Greene, Jr. - - - - Appeal from Harris County

OPINION

This is an appeal from an order in a habeas corpus proceeding in which appellant was remanded to the custody of the Chief of Police of the City of Houston.

The avowed purpose of this proceeding is to test the sufficiency of the complaint upon which appellant has not yet been tried and to test the form of the bail bonds required by the City of Houston.

In Ex Parte Jarvis, 3 S.W.2d 84, Judge Hawkins speaking for the Court said:

> "In the present case the effort is to have this court declare in a habeas corpus proceeding that a particular information fails to charge the violation of a law, the existence of which is not questioned.
>
> Whatever may be the rule in other jurisdictions it seems to be the settled policy in this state not to permit resort to habeas corpus proceedings primarily for the purpose of testing the sufficiency of a complaint or indictment in advance of a trial in the lower courts."

Later in Ex Parte Drenner, 67 S.W.2d 870, this Court said:

> "This court is not a jury, nor is it a nisi prius court. Every question that is here presented could and should be first presented to a trial court upon the support of competent testimony, and from the decision of such trial court, if unsatisfactory, an appeal could be had

to this court, which could then pass upon the law and the testimony heard by the trial court."

See also Article 11.45, V.A.C.C.P.

The judgment remanding appellant is affirmed.

Morrison, Judge

(Delivered June 8, 1966)

APPENDIX "B"

TRIAL COURT NO. 212,965

THE STATE OF TEXAS,

TO THE COUNTY CRIMINAL COURT AT LAW NO. 2 OF HARRIS COUNTY—GREETING:

Before our COURT OF CRIMINAL APPEALS, on the 12th day of October, A.D. 1966, the cause upon appeal to revise or reverse your Judgment between Ex Parte George H. Greene, Jr., Appellant, No. 39,658 vs. The State of Texas, Appellee, was determined; and therein our said COURT OF CRIMINAL APPEALS made it order in these words:

"This cause came on to be heard on the transcript of the record of the Court below, and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, it is ordered, adjudged and decreed by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance." APPELLANT'S MOTION FOR REHEARING OVERRULED WITHOUT WRITTEN OPINION:

WHEREFORE, We command you to observe the order of our said COURT OF CRIMINAL APPEALS in this behalf and in all things to have it duly recognized, obeyed and executed.

WITNESS, the HON. W. A. MORRISON, Presiding Judge of our said COURT OF CRIMINAL APPEALS, with the Seal thereof annexed, at the City of Austin, this 14th day of October, A.D. 1966.

(Seal)

Glenn Haynes, Clerk.

APPENDIX "C"

Article 15.05 Texas Code of Criminal Procedure

The complaint shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him.

2. It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense.

3. It must state the time and place of the offense, as definitely as can be done by the affiant.

4. It must be signed by the affiant by writing his name or affixing his mark.